



Bankruptcy and Debt Advice (Scotland) Act 2014

2014 asp 11

Functions of sheriff and Accountant in Bankruptcy in sequestration

35 Power to cure defects in procedure

- (1) The title of section 63 of the 1985 Act becomes “**Power of court to cure defects in procedure**”.
- (2) In section 63 of the 1985 Act—
 - (a) after subsection (1), insert—

“(1A) An order under subsection (1) may waive a failure to comply with a requirement mentioned in section 63A(1)(a) or (b) only if the failure relates to—

 - (a) a document to be lodged with the sheriff,
 - (b) a document issued by the sheriff, or
 - (c) a time limit specified in relation to proceedings before the sheriff or a document relating to those proceedings.”, and
 - (b) in subsection (2)(b) after “estate” insert “the Accountant in Bankruptcy or”.
- (3) After section 63 of the 1985 Act, insert—

“63A Power of Accountant in Bankruptcy to cure defects in procedure

- (1) The Accountant in Bankruptcy may make an order—
 - (a) correcting a clerical or incidental error in a document required by or under this Act, or
 - (b) waiving a failure to comply with a time limit—
 - (i) which is specified by or under this Act, and
 - (ii) for which no provision is made by or under this Act.
- (2) An order under subsection (1) may be made—
 - (a) on the application of any person having an interest, or

Status: This is the original version (as it was originally enacted).

- (b) without an application if the Accountant in Bankruptcy proposes to correct or waive a matter mentioned in subsection (1).
- (3) The applicant must notify all interested persons where an application is made under subsection (2)(a).
- (4) The Accountant in Bankruptcy must notify all interested persons where the Accountant in Bankruptcy proposes to make an order by virtue of subsection (2)(b).
- (5) A notice under subsection (3) or (4) must inform the recipient that the person has a right to make representations to the Accountant in Bankruptcy in relation to the application or the proposed order before the expiry of the period of 14 days beginning with the day on which the notice is given.
- (6) Before making an order under subsection (1), the Accountant in Bankruptcy must take into account any representations made by an interested person.
- (7) An order under subsection (1) may—
 - (a) so far as practicable, restore any person prejudiced by the error or failure to the position that person would have been in but for the error or failure,
 - (b) impose such conditions, including conditions as to expenses, as the Accountant in Bankruptcy thinks fit.
- (8) After making an order which affects a matter which is recorded in the Register of Inhibitions, the Accountant in Bankruptcy must without delay send a certified copy of the order to the Keeper of that register for recording in that register.

63B Decision under section 63A: review

- (1) An interested person may apply to the Accountant in Bankruptcy for a review of a decision of the Accountant in Bankruptcy to make, or refuse to make, an order under section 63A(1).
- (2) An application under subsection (1) must be made before the expiry of the period of 14 days beginning with the day of the decision.
- (3) If an application under subsection (1) is made, the Accountant in Bankruptcy must—
 - (a) take into account any representations made by an interested person before the expiry of the period of 21 days beginning with the day on which the application is made, and
 - (b) confirm, amend or revoke the decision before the expiry of the period of 28 days beginning with the day on which the application is made.
- (4) An interested person may appeal to the sheriff against a decision by the Accountant in Bankruptcy under subsection (3)(b) before the expiry of the period of 14 days beginning with the day of the decision.
- (5) The decision of the sheriff on an appeal under subsection (4) is final.”.